

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 50/CR/May08

In the matter between:

The Competition Commission Applicant

and

Foodcorp (Pty) Ltd Respondent

Panel : D Lewis (Presiding Member), N Manoim (Tribunal Member), and U Bhoola (Tribunal Member)

Heard on : 06 January 2009

Decided on : 06 January 2009

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent, annexed hereto marked "A", in terms of section 49D(2)(a) of the Competition Act .



D Lewis

Concurring: N Manoim and U Bhoola



competitiontribunal south africa

Form CT 6

Notice of Motion

About this Form

This Form is issued in terms of the Competition Tribunal Rules.

Please indicate in the space provided the nature of your motion, including specific reference to the relevant section of the Act or Tribunal Rules.

If this Notice of Motion concerns a matter being brought in terms of Division E of Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

Date: 5-Jan-2009 **File #** 50/CR/Mar08

To: The registrar of the Competition Tribunal

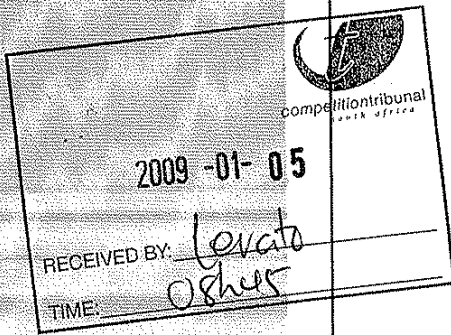
Concerning the matter between:

THE COMPETITION COMMISSION (Applicant)

and FOODCORP (PTY)LTD t/a SUNBAKE BAKERIES (Respondent)

Take notice that the Competition Commission intends to apply to the Tribunal for the following order:

SEE SETTLEMENT AGREEMENT BETWEEN THE COMMISSION AND FOODCORP ATTACHED AS ANNEXURE "A"



Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Name and Title of person authorised to sign:

Nene Mateane : Legal Counsel, Competition Commission

Authorised Signature:

Date:

5-Jan-2009

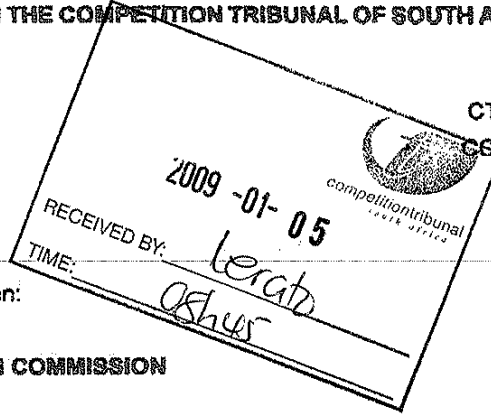
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Tribunal file number:

Date filed:

ANNEXURE "A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA



CT Case No. 50/CR/Mar08

CG Case No. 2007Jan2717

2007Nov3354

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

FOODCORP (PTY) LTD T/A SUNBAKE BAKERIES

Respondent

In re:

THE COMPETITION COMMISSION

Applicant

and

PIONEER FOODS (PTY) LTD T/A SASKO & DUENS BAKERIES

First Respondent

FOODCORP (PTY) LTD T/A SUNBAKE BAKERIES

Second Respondent

**SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
FOODCORP (PTY) LTD IN REGARD TO CONTRAVENTIONS OF SECTIONS 4(1)(b)(i) OF
THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998)**

The *Commission* and *Foodcorp* hereby agree that application be made to the Tribunal for an order in terms of section 58(1)(a)(iii) of the Competition Act, No. 89 of 1998, as amended, on the terms set out more fully below.

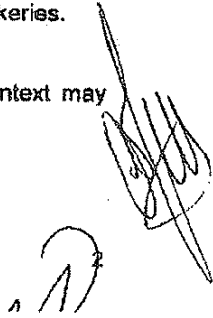
1.

Definitions

For the purposes of this Settlement Agreement the following definitions shall apply:

- 1.1 The "**Act**" means the Competition Act, 1998 (Act No. 89, of 1998), as amended;
- 1.2 "**Commission**" means the Competition Commission of South Africa, a statutory body, established in terms of section 19 of the Act, with its principal place of business at Building C, Mulayo Building, dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 "**Commissioner**" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.4 "**Settlement Agreement**" means this agreement duly signed and concluded between the *Commission* and *Foodcorp*;
- 1.5 "**Complaints**" means the complaint initiated by the *Commissioner* of the *Commission* in terms of section 49B of the Act under case number 2007Jan2717 and a complaint filed by one Andrehette van Wyk in terms of section 49B(2) of the Act under case number 2007Nov3354.
- 1.6 "**Corporate Senior Management of Foodcorp**" means collectively:
- 1.6.1 Justin Williamson - the Chief Executive Officer;
- 1.6.2 Cliff Sampson - the Managing Director; and
- 1.6.3 Ockert Strydom - the former Chief Executive Officer of Sunbake Bakeries.

and includes an individual reference to one or more of them, as the context may require;



- 1.7 "*CLP*" means the Corporate Leniency Policy prepared and issued by the *Commission* as a guideline, to clarify the *Commission's* policy approach on matters falling within its jurisdiction in terms of the *Act*;
- 1.8 "*Days*" means calendar days;
- 1.9 "*Foodcorp*" means Foodcorp (Pty) Ltd trading as Sunbake Bakeries;
- 1.10 "*Parties*" means the *Commission* and *Foodcorp*;
- 1.11 "*Pioneer*" means Pioneer Foods Ltd trading as Sasko and Duens Bakeries;
- 1.12 "*Premier*" means Premier Foods Ltd trading as Blue Ribbon Bakeries;
- 1.13 "*Tiger*" means Tiger Consumer Brands Limited trading as Albany Bakeries;
- 1.14 "*Tribunal*" means the Competition Tribunal of South Africa, a statutory body, established in terms of section 26 of the *Act*, with its principal place of business at Building C, Mulayo Building, dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2.

The Complaints and Complaint Investigation

- 2.1 During December 2006, the *Commission* received information regarding price-fixing and the division of markets by *Premier*, *Tiger* and other firms active in the production and wholesale distribution of bread in the Western Cape.
- 2.2 The *Commission* subsequently initiated a complaint against these firms ("the Western Cape complaint") that:
- 2.2.1 During the period November 2006 to December 2006, *Tiger*, *Pioneer* and *Premier* directly fixed the price of bread to their customers in the Western Cape;
- 2.2.2 The said firms fixed the discounts which each of them offered to their independent distributors in the Western Cape to a maximum of 75c per loaf of bread; and



- 2.2.3 The said firms agreed not to poach each other's distributors, in contravention of section 4 of the Act. Foodcorp was not named as a respondent in the Western Cape complaint.
- 2.3 During the investigations the Commission's inspectors interviewed representatives of the firms that were alleged to be involved in the price-fixing and division of markets.
- 2.4 Premier, shortly before its representatives were interviewed, approached the Commission and applied for immunity from prosecution in terms of the CLP confessing to its involvement in price-fixing and market allocation. Premier subsequently provided the Commission with detailed information about its role and that of Tiger, Pioneer and Foodcorp in price-fixing and market allocation, not only in the Western Cape, but throughout the Republic of South Africa. Premier was granted conditional leniency after agreeing to assist the Commission in its investigations and in proceedings before the Tribunal.
- 2.5 The Commission initiated an investigation into these allegations under case number 2007Jan2717 ("the national complaint"). The investigation established that at various stages during the period 1995 to 2006, Premier, Tiger, Pioneer and Foodcorp were involved in price-fixing and market allocation in contravention of section 4(1)(b)(i) and (ii) of the Act in that representatives of the firms:
- 2.5.1 Held telephonic discussions and meetings where they directly fixed the selling price of bread to their customers; and
- 2.5.2 Directly fixed the implementation dates when such agreed price increases would be effective; and
- 2.5.3 Divided markets by allocating territories where each firm would be the only one operating a bakery in a particular territory and/or supplying all distributors in the allocated area.
- 2.6 The Commission subsequently received a complaint that Sunbake Bakery had been involved in price-fixing in the Malelane and surrounding areas in that its representatives had held discussions and corresponded with its competitors directly fixing the price of bread to their customers and agreeing to the timing of such increases. This complaint was submitted under case number 2007Nov3354 ("the Malelane complaint").



3.

The Complaint Referral

- 3.1 The *Commission* referred the national complaint to the *Tribunal* on 6 May 2008. The Malelane complaint is yet to be referred to the *Tribunal*.
- 3.2 *Tiger*, after receiving the Western Cape Complaint Referral conducted its own investigation of the allegations made against it. It thereafter approached the *Commission* with a view to settling the matter in consequence whereof a Consent Agreement was concluded. As part of its cooperation, *Tiger* corroborated the information contained in *Premier's* leniency application. Hence upon referral of the national complaint, *Tiger* was not named as a party as it had settled with the *Commission*.
- 3.3 *Foodcorp*, shortly after referral of the national complaint, but prior to the referral of the Malelane complaint, approached the *Commission* indicating its willingness to settle with the *Commission* and requesting an opportunity to conduct its own internal investigation into the allegations made against it. Upon concluding its investigation, *Foodcorp* engaged the *Commission* further with respect to its findings which engagements have culminated in this Settlement Agreement.

4.

Statement of Conduct

- 4.1 *Foodcorp* admits that it has contravened sections 4(1)(b)(i) of the Act in that:
- 4.1.1 Sunbake Bakeries and its competitors were engaged in price-fixing in respect of bread sold to their customers and the timing of such increases; and
- 4.1.2 Sunbake Bakeries and its competitors in the Malelane and surrounding areas met to fix the price of bread and the timing of such increase.
- 4.2 The *Corporate Senior Management of Foodcorp* confirm that, to the best of their knowledge and belief, there are no further contraventions of section 4 of the Act, which were and/or might have been engaged in by *Foodcorp*.



5.

Agreement Concerning Future Conduct

5.1 *Foodcorp* agrees to cooperate with the *Commission* in relation to the prosecution of any other firm arising from the *Commission's* investigation of the *Complaints*.

5.2 *Foodcorp* agrees:

5.2.1 To circulate a statement summarising the contents of this Settlement Agreement to all employees above Paterson Grade D employed within *Foodcorp* within 30 days from the date of confirmation of this agreement as an order of the *Tribunal*.

5.2.2 To develop and implement a compliance programme incorporating corporate governance designed to ensure that employees, management and directors within *Foodcorp* do not engage in any contraventions of section 4(1)(b) of the *Act*, a copy of which programme shall be submitted to the *Commission* within 60 days of the date of confirmation of this consent order by the *Tribunal*.

6.

Administrative Penalty

6.1 Having regard to the provisions of section 58(1)(a)(iii), read with sections 59(1)(a), 59(2) and (3) of the *Act*, *Foodcorp* accepts that it is liable for an administrative penalty.

6.2 The parties have agreed that *Foodcorp* should pay an administrative penalty in the amount of 6,7% of its turnover from all its baking operations for the financial year ending in 2006. This amounts to R45 406 359,82 (forty-five million, four hundred and six thousand, three hundred and fifty-nine rand and eighty-two cents).

6.3 The penalty amount will be paid by *Foodcorp* to the *Commission* in three equal annual payments, the first such payment to be made within 30 days of the date of confirmation of this settlement agreement by the *Tribunal*. The remaining two payments will be due on the 31st of January 2010 and the 31st of January 2011 respectively.

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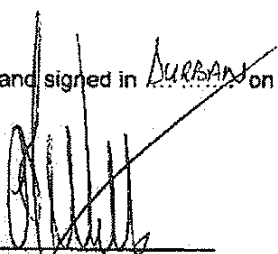
6.4 The *Commission* will pay these sums to the National Revenue Fund in terms of section 59(4) of the *Act*.

7.

Full and Final Resolution

~~This Settlement Agreement is entered into in full and final settlement of all proceedings between the parties, and upon confirmation as an order by the *Tribunal*, concludes all proceedings between the *Commission*, and *Foodcorp* relating to any alleged contravention by *Foodcorp* of section 4(1)(b) of the *Act* that is the subject of the *Commission's* investigations under case numbers 2007Jan2717 and 2007Nov3354.~~

Dated and signed in DURBAN on this the 23 day of December 2008.


Justin Williamson
Director-authorised signatory
Foodcorp (Pty) Ltd

Dated and signed in Pretoria on this the 22 day of December 2008.


Shan Ramburuth
The Commissioner, Competition Commission

